

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAN ALEXANDER)	
Claimant)	
VS.)	
)	
LONNIE'S ROUSTABOUT SERVICE)	Docket No. 265,717
Respondent)	
AND)	
)	
EMPLOYERS MUTUAL CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the December 30, 2003 Award of Administrative Law Judge Pamela J. Fuller. Claimant was awarded benefits for an 11 percent permanent partial impairment to the body as a whole as a result of injuries suffered on April 28, 2001. Respondent contends that claimant's injuries were temporary, at best, and he should be denied any permanency or, at the very least, his permanent partial disability award should be limited to a 12 percent impairment to the upper extremity for the injuries to his right wrist. Claimant contends that the Award is appropriate based upon the evidence and should be affirmed. The Appeals Board (Board) heard oral argument on June 8, 2004.

APPEARANCES

Claimant appeared by his attorney, Lawrence M. Gurney of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard L. Friedeman of Great Bend, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge (ALJ).

ISSUES

What is the nature and extent of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the ALJ should be modified to grant claimant a permanent partial disability for an 8 percent impairment to the body as a whole.

Claimant suffered accidental injury on April 28, 2001, while working as a roustabout for respondent. While working on a pumping unit, claimant was struck in the face by a rocking arm and knocked unconscious. Two of claimant's teeth were also damaged. That same day, he was airlifted to Wesley Medical Center, where he was admitted. After approximately three days of treatment, claimant was discharged on May 1, 2001. Claimant then came under the treatment of board certified family practitioner Erik Sandstrom, M.D. Dr. Sandstrom first saw claimant on May 7, 2001, at which time there was no indication that claimant was complaining of problems with his wrist. However, it is noted that at the time claimant was admitted into the emergency room at Wesley Medical Center, x-rays of the right wrist were taken, with the x-ray report indicating claimant was suffering right wrist pain. There was an indication in the x-rays of an old avulsion fracture of the ulnar styloid. That matter becomes somewhat in dispute as x-rays taken on May 15, 2001, also at Wesley Medical Center, indicated that the fracture of the styloid process of the ulna was in the left wrist, rather than the right. Respondent contends that this preexisting fracture negates any permanency associated with claimant's April 28, 2001 injury.

It is noted that, when Dr. Sandstrom first examined claimant, he was complaining of right hip pain located in the right flank. However, that was the last note of any hip complaints in Dr. Sandstrom's records. Dr. Sandstrom continued treating claimant through June 2, 2003. At the time of the June 2, 2003 examination, claimant did have some left flank and lower back pain, which, from all indications, is not related to his work-related injury. At the time of the initial injury, the only complaints were to claimant's right hip.

Dr. Sandstrom echoed concerns about claimant's complaints, describing them as being "very vague."¹ Claimant was also vague about alleged memory problems. It is noted that when claimant was struck by the rocking arm, he was knocked unconscious for a period of time. There was some question regarding whether claimant may have suffered a closed head injury. Because of this, claimant was referred to neuropsychologist

¹ Sandstrom Depo. at 12 and 13.

Mitchel A. Woltersdorf, Ph.D., by Dr. Sandstrom. On Dr. Woltersdorf's intake form, completed by claimant's wife on June 8, 2001, it indicated moderate to severe pain in the lower neck, arm and back. There was no mention of claimant's alleged hip injury. Dr. Woltersdorf performed tests on claimant, which indicated that claimant was attempting to appear more impaired than he actually was. Dr. Woltersdorf felt that claimant was clearly malingering, both cognitively and emotionally. After subjecting claimant to tests, he determined that claimant did not suffer any permanent brain injury from the accident. Dr. Woltersdorf did not examine claimant's low back, hips, arms or shoulders.

Dr. Woltersdorf stated that the literature connected to traumatic brain injuries indicates that within four to six weeks, most people return to normal baseline. He went on to state that if claimant had any legitimate deficits, claimant was completely obscuring them by attempting to falsify the test results.

Claimant was referred by his attorney to board certified physical medicine and rehabilitation specialist Pedro A. Murati, M.D. Dr. Murati examined claimant on August 7, 2001. At that time, Dr. Murati had the opportunity to examine the April 28, 2001 x-ray reports, noting the old wrist fracture in the right wrist. He diagnosed claimant with symptomatology inconsistent with the evaluation, right wrist pain secondary to the fall and right hip pain secondary to pelvic brim pain. He assessed claimant a 12 percent impairment to the right upper extremity at the right wrist secondary to moderate crepitus. He did note that this is pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), and is separate from the fracture identified in the x-ray reports. Dr. Murati provided claimant no impairment for the hip complaints or the closed head injury. Dr. Murati found that claimant, in this instance, did not take the examination seriously, giving the impression, according to Dr. Murati, that the entire situation was a joke. On cross-examination, he did agree that those symptoms could be consistent with a closed head injury. However, he went on to state that he found no basis in the record to assign any impairment for the right hip or the closed head injury.

Claimant was then referred by his new attorney to Peter V. Bieri, M.D., for an examination on May 6, 2002. There is no indication in Dr. Bieri's examination notes that claimant took this examination lightly. Dr. Bieri diagnosed closed head trauma and traumatic brain injury, soft tissue injury to the right wrist, injury to the right hip, residual headache symptomatology and trauma to two of his teeth in the front. He opined claimant had a 12 percent impairment of the upper extremity at the wrist, which converts to a 7 percent whole person impairment, for crepitus and weakness of the right wrist. He gave claimant a 7 percent impairment to the right lower extremity for the residuals from the hip and pelvic pain, which computes to a 3 percent whole person impairment. And, finally, he gave claimant a 1 percent impairment for the loss of dentition as a result of the damage to claimant's teeth. All combined, claimant had an 11 percent impairment to the body as a whole. Dr. Bieri stated that the impairment given to the wrist was separate and new from

the preexisting fracture injury. It was disputed, with regard to the use of the *AMA Guides* (4th ed.) and the 1 percent loss of dentition, whether that finding was appropriate under the circumstances. Several questions were asked of Dr. Bieri during cross-examination regarding the Class II finding, which requires a loss of supporting structure. Dr. Bieri felt that claimant's teeth were a supporting structure. However, on cross-examination, respondent attempted to limit the supporting structure definition to the bony areas of the face, including cheekbones, nasal bones and the frontal bones of the face. Even after significant cross-examination, Dr. Bieri, while somewhat hesitant, refused to modify his opinion regarding the 1 percent impairment.

The ALJ in the Award adopted the opinion of Dr. Bieri, finding claimant suffered an injury to his face, right wrist and right hip. Claimant was awarded an 11 percent impairment to the body as a whole.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.² In this instance, the Board finds that claimant's credibility is somewhat questioned, as both Dr. Murati and Dr. Woltersdorf found claimant's complaints to not be justified by the physical findings during the examination. Both Dr. Murati and Dr. Woltersdorf indicated that claimant was attempting to manipulate the results of the test, with Dr. Murati indicating claimant did not take the matter seriously and Dr. Woltersdorf going so far as to indicate claimant was a malingerer.

Additionally, the medical records, while indicating an initial complaint to the hip, are later void of any ongoing hip complaints. After claimant's first comment to Dr. Sandstrom about right hip pain, claimant failed to again discuss the hip complaints with Dr. Sandstrom until over two years after the accident. Additionally, while Dr. Murati was advised of ongoing hip complaints on August 7, 2001, Dr. Murati found claimant's complaints to be unjustified based upon the evidence and his examination of claimant. The Board finds that claimant has failed to prove that he had any permanent impairment as a result of an injury to his right hip from the April 28, 2001 injury.

Respondent contends claimant also failed to prove any permanency with regard to the right wrist. However, when claimant was first examined in the emergency room on the date of accident, he did have complaints to his right wrist. Claimant's complaints to the right wrist, while being sporadic, did, for the most part, continue throughout his treatment. Both Dr. Murati and Dr. Bieri assessed claimant a 12 percent impairment to the upper extremity for claimant's right wrist complaints, indicating that this 12 percent impairment was exclusive of the fractures which appear on the x-rays of claimant's wrist. This

² K.S.A. 44-501 and K.S.A. 44-508(g).

impairment rating translates to a 7 percent impairment to the body as a whole, which the Board awards claimant.

Finally, the Board considers claimant's 1 percent impairment for the dentition, associated with the injury to his teeth, to be appropriate. While Dr. Bieri did equivocate somewhat with regard to the 1 percent impairment as it relates to the *AMA Guides*, he did ultimately opine that claimant had suffered permanent injury as a result of the damage to his teeth. The Board notes that the initial trauma was sufficient to not only break two of claimant's teeth, it also rendered claimant unconscious for 30 to 45 minutes. The Board finds, pursuant to the *AMA Guides* (4th ed.), that claimant did have permanent damage to his facial structure, specifically his teeth, and the 1 percent impairment for loss of dentition is appropriate under these circumstances. The Board, therefore, finds that claimant has suffered an 8 percent impairment to the body as a whole for the injuries suffered on April 28, 2001, while employed with respondent and modifies the Award of the ALJ accordingly.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Pamela J. Fuller dated December 30, 2003, should be, and is hereby, modified, and an award is granted in favor of the claimant and against the respondent for injuries suffered on April 28, 2001, based upon an average weekly wage of \$625 for an 8 percent impairment to the body as a whole. Claimant is entitled to 7.29 weeks of temporary total disability compensation at the rate of \$401 per week totaling \$2,923.29, followed by 33.2 weeks of permanent partial general disability compensation at the rate of \$401 per week totaling \$13,313.20, for a total award of \$16,236.49.

As of the date of this award, the entire amount would be due and owing and ordered paid in one lump sum minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this ____ day of July 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director